IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Criminal Appeal No.384-DB of 2001
Date of decision: 16.01. 2007

Sudagar Khan & others.

-----Appellants..

Vs.

The State of Punjab.

-----Respondent..

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE H.S. BHALLA

Present: Mr. H.S. Bhullar, Advocate
for the appellant.

Mr. M.S. Sidhu, Sr. DAG, Punjab.

:

Adarsh Kumar Goel, J.

This appeal has been preferred by the appellants Sudagar Khan son of Gafoor Khan, Naziran widow of Gafoor Khan and Mintu daughter of Gafoor Khan against their conviction under Sections 302/34 IPC and sentence to life imprisonment.

Kangan Khan, PW-2 got a statement recorded by ASI Jagjiwan Singh, PW-9, which led to registration of FIR on 02.06.1999 at 3.05 P.M. According to the statement, Harpreet Kaur, deceased was married to Sudagar Khan, accused one and a quarter year prior to occurrence. She had no issue. She was not treated well by the accused persons i.e. her husband, mother-in-law and sister-in-law, who used to remark that she had brought less dowry. On 31.05.1999 in the morning, he came to know that the deceased was burnt by the accused by pouring kerosene on her body and she was taken to Civil Hospital, Dhuri. Kangan Khan along with his wife reached the hospital and saw her body charred on account of burns. She stated that her husband had caught her while her mother-in-law poured kerosene and sister-in-law lighted the match stick. She became unconscious. She was later referred to Rajindra Hospital, Patiala for treatment and at the time of the statement, she was in the said hospital. PW-9

Jagjiwan Singh, ASI went to Rajindra Hospital and sought opinion of the doctor vide Exh.PJ, but the doctor vide Exh.PJ/1 declared her unfit to make a statement. On the next day again, the Investigating Officer sought opinion of the doctor vide Exh.PK and doctor again declare her unfit to make a statement vide Exh.PK/1. On the third day on 2.6.1999, the Investigating Officer gave an application Exh.PL, on which the doctor declared her fit to make a statement vide Exh.PL/1. Her statement/dying declaration was recorded by Dr. K.D. Singh which is Exh.PT, which was thumb-marked by Harpreet Kaur. He then recorded the statement of Kangan Khan Exh.PD in the hospital leading to registration of FIR Exh.PD/1. The Investigating Officer visited the spot and inspected the same. He prepared a site plan Exh.PH, recovered plastic can containing kerosene and a match box.

The deceased died on 6.6.199. After investigation, the accused were challaned. They were charged under Sections 302/34 IPC and in the alternative under Section 304-B/498-A/34 IPC. The accused denied the charge.

The prosecution in order to prove its case examined as many as nine witnesses, namely, Dr. Ramesh Sharma, Medical Officer, Civil Hospital, Dhuri (PW-1), Kangan Khan, father of the deceased (PW-2), Amarjit Kaur, mother of the deceased (PW-3), Sheela Devi (PW-4), Tarsem Singh (PW-5), Inspector Swaran Singh (PW-6), Dr. Harish Tuli (PW-7), Dr. Kamal Deep Singh (PW-8), Jagjiwan Singh, Assistant Sub Inspector (PW-9), the Investigating Officer of this case.

In their statements recorded under Section 313 of the Code of Criminal Procedure, the accused denied allthe allegations levelled against them. They pleaded that they are innocent. They have been falsely implicated in the present case. Their relations with the deceased were cordial and there was no demand of dowry on their part.

The trial Court held the case of the prosecution to be proved solely on the basis of dying declaration of the deceased recorded by ASI Jagjiwan Singh, which was attested by Dr. K.D.Singh.

We have heard the learned counsel for the parties and have gone through the record of the case carefully.

The prosecution inter-alia examined Dr. Ramesh Sharma, PW-1, who examined the deceased on 31.05.1999 at 7.40 A.M. and found multiple burns on the face, chest, abdomen, upper limbs and lower limbs. He proved the report of medico-legal examination. He further deposed that he referred the patient to Rajindra Hospital, Patiala and sent intimation Exh.PC to the SHO P.S. Dhuri. PW-7, Dr. Harish Tuli of Rajindra Hospital, Patiala conducted the post-mortem examination on 6.6.1999 at 1.30 P.M. He proved post-mortem report Exh.P5 and deposed that death took place on account of burns which were ante mortem and sufficient in the ordinary course of nature to cause death. PW-8 Dr. K.D. Singh was examined to prove that on 2.6.1999, the patient was declared fit to make a statement which was recorded by ASI Jagjiwan Ram in his presence. The dying declaration Exh.PT is as under:-

> "Stated that I am married of at Bararwal. My husband Saudagar Khan, mother-in-law Nazira and sister-in-law Mintu, put me on fire by pouring kerosene.
>
> Attested
> Jagjiwan Singh RTI Harpreet Kaur
> ASI
> P.S. Dhuri, Dt. 2.6.99.
>
> Sd/- in English
> Doctor 2.6.99
>
> 10..05 A.M."

PW-2 Kangan Khan deposed that his daughter was married to the accused and her relations with her husband were cordial. He never demanded dowry. He came to know that she was admitted to hospital with burn injuries. He was declared hostile and denied having made statement Exh. PD before the police that his daughter had stated that her in-laws and husband had burnt her. He stated that she was not in a position to speak as her mouth was swollen. He resiled from the statement Exh.PD. He, however, admitted that he joined the police party to recover the plastic can and match box. PW-3 Amarjit Kaur is the mother of the deceased and she deposed that the deceased was never harassed

for dowry. She was also declared hostile. In cross-examination, she stated that her daughter had not disclosed anything nor made any statement. She also resiled from the statement made to the police earlier. PW-4 Sheela Devi was a mediator for the marriage and she also resiled from the statement made to the police. She was declared hostile. PW-5 Tarsem Singh, Draftsman was examined to prove the site-plan, Exh.PH. PW-6 Inspector Swaran Singh proved the FIR and investigation conducted by him after he took it over from Jagjiwan Singh, PW-9. He arrested the accused and got post-mortem conducted after completing the inquest report. He had also recorded statements of the witnesses. PW-9 Jagjiwan Singh had recorded the statement leading to registration of FIR and in his presence, dying declaration was also recorded. He further proved the investigation conducted by him including recovery of kerosene can and match box.

In their statements under Section 313 Cr.P.C., the accused denied the allegations. The trial Court held the case of the prosecution to be proved solely on the basis of dying-declaration of the deceased recorded by ASI Jagjiwan Singh which was attested by Dr. K.D. Singh.

Learned counsel for the appellants submitted that conviction of the appellants solely on the basis of dying-declaration was not called for and the case of the prosecution had not been proved beyond the doubt. He further submitted that the parents of the deceased had not supported the prosecution version and stated that no dowry was ever demanded and the relations of the deceased with her husband and other family members were cordial. It was further submitted that though the deceased died six days after receiving the burn injuries, the prosecution did not associate any Magistrate to record the dying declaration. He submitted that the doctor had merely certified that the deceased was fit to make statement without certifying her mental condition.

It was submitted that the deceased was not in a condition to make a dying declaration and condition of the patient never improved. The deceased was declared unfit to make a statement on 31.5.199 and 1.6.1999 and it was doubtful

that she was in a condition to make a statement on 2.6.1999. There was contradiction as to whether the statement was recorded by the Investigating Officer or by the doctor. It was submitted that mere circumstance of the deceased receiving burn injuries in the matrimonial home was not enough for conviction of the appellants, however, strong suspicion it may raise. He further pointed out that the deceased was taken to the hospital by appellant No.1 as deposed by PW-1 Dr. Ramesh Sharma. In these circumstances, it was submitted that the accused were entitled to the benefit of doubt.

Learned counsel for the State supported the findings of conviction and submitted that the circumstance of deceased having received the burn injuries in the matrimonial home corroborated by dying declaration was enough to connect the appellants with the crime and case of the prosecution has rightly been held to be proved beyond reasonable doubt even though the parents of the deceased may have resiled from their version given to the police.

We have considered the rival submissions and perused the record.

It is crystal clear from the record that Dr. Ramesh Sharma, who examined Harpreet Kaur, stepped into the witness box as PW-1 and deposed that on 31.5.1999 at 7.40 A.M.he found multiple burns on the face, chest, abdomen, upper limbs and lower limbs. He proved the Medico-legal report. He further deposed that he referred the patient to Rajindra Hospital, Patiala and sent intimation Exs. PC to the Station House Officer, Police Station, Dhuri. Dr. Harish Tuli, Rajindera Hospital, Patiala, conducted the post mortem examination on the dead body of Har Preet Kaur on 6.6.1999 at 1.30 P.M. He proved post mortem report Ex. P-5 and deposed that death took place on account of burns which were ante mortem and sufficient in the ordinary course of nature to cause death. Dr. K.D.Singh (PW-8) was examined to prove that on 2.6.1999, the patient was declared fit to make a statement which was recorded by ASI Jagjiwan Ram in his presence.

Record further spells out that Kangan Khan, the father of the deceased, stepped into the witness box as PW-1 and deposed that his daughter was married to the accused and her relations with her husband were cordial. He never demanded dowry. He came to know that she was admitted to hospital with burn injuries. He was declared hostile and denied having made statement Ex. PD before the police that his daughter had stated that her in-laws and husband had burnt her. He stated that she was not in a position to speak as her mouth was swollen. He resiled from the statement Ex. PD. He, however, admitted that he joined the police party to recover the plastic can and match box. PW-3 Amarjit Kaur is the mother of the deceased and she deposed that the deceased was never harassed for dowry. She was also declared hostile. In cross-examination, she stated that her daughter had not disclosed anything nor made any statement. She also resiled from the statement made to the police earlier. PW-4 Sheela Devi was a mediator for the marriage and she also resiled from the statement made to the police. She was declared hostile. All these witnesses have deposed in a similar fashion and they have not supported the prosecution version. Kangan Khan (PW-2), father of the deceased and Amarjit Kaur, the mother of the deceased (PW-3) have disclosed that their daughter Harpreet Kaur was married to accused Sudagar Khan about one and a quarter year prior to occurrence. No child was born out of this wedlock and the relations between their daughter and son-in-law were cordial. They both categorically deposed that the accused never demanded any dowry from them nor from their daughter and they learnt that the deceased had died of burn injuries. Both of them were declared hostile and were cross-examined at length by the learned Public Prosecutor, but even then nothing of importance could be elicted in favour of the prosecution. Faced with this situation, the prosecution placed reliance on the dying declaration and since the witnesses of the prosecution have resiled, the entire case of the prosecution case revolves around dying declaration Ex. PT and before proceeding further in the matter in order to arrive at a right conlusion, it is necessary to reproduce this dying declaration which runs as under:-

"Stated that I am married of at Bararwal. My husband Saudagar Khan, mother-in-law Nazira and sister-in-law Mintu, put me on fire by pouring kerosene.

Attested
Jagjiwan Singh
ASI
P.S.Dhrui, Dt.2.6.99

RTI Harpreet Kaur
Sd/- in English
Doctor 2.6.99
10.05 A.M."

We are conscious of the fact that dying declaration can form sole basis of conviction if it is free from any kind of doubt and recorded in accordance with law, but this dying declaration is not at all free from doubt and the same has been recorded by a police officer, who is certainly interested in the success of the case. It was necessary for the prosecution to show and prove that this dying declaration is genuine and free from all doubts and above all, it was recorded when the injured was in a fit state of mind. The doctor has not appended any certificate with regard to the fact that when dying declaration was recorded on 2.6.1999 at 10.05 A.M., her mental state was such that she could suffer a statement. A perusal of the record clearly spells out that on 31.5.1999, application, Ex. PJ, was moved to the Incharge, Rajindera Hospital by Jagjiwan Singh, Assistant Sub Inspector in order to find out if injured was fit to make a statement and on the same day, i.e, 31.5.1999 at 9.00 P.M., doctor attending on her disclosed that Harpreet Kaur was not fit to make statement. Then again on 1.6.1999 another application, Ex. PK, was moved and on the same day at 11.05 A.M. doctor again opined that Harpreet Kaur is unfit to make statement, as she was under the effect of sedation and on 2.6.1999 application, Ex. PL, was moved, the contents of which which run as under:-

"P.S.Dhuri District Sangrur

D.D.R. No._____Dated 2.6.99

To

Incharge Rajindera Hospital,
Patiala

Sir,

Injured Harpreet Kaur wife of Saudagar Khan Mohamdan Marasi r/o Bararbal is admitted in serious condition in Rajindera Hospital, Patiala, on account of burning. It be intimated that injured is fit or unfit to give the statement C.R. No. of injured is 14333.

Sd/-
Jagjiwan Singh ASI
P.S. Dhuri dated 2.6.99

Pt. Harpreet Kaur fit to give statement

Sd/-
9.45 A.M.

Ex. PL/1
Sd/-
Sessions Judge, Sangrur
1.2.2001"

On the application aforesaid moved, the doctor attending on the patient, declared Harpreet Kaur fit to give statement, but no certificate has been given by the Medical Officer about the mental fitness of the declarant to make the statement. There is nothing on record to spell out that the condition of the deceased improved on 2.6.1999, whereas on earlier dates, the doctor had issued the certificates that she was unfit to suffer a statement. If she was fit to make a statement then there was ample time available for the Investigating Officer to get the statement of deceased Harpreet Kaur recorded by a Magistrate, but even then no effort was made. Taking this aspect of the matter cumulatively, it appears difficult for us to accept this statement or to base the conviction of the appellant solely on this weak type of dying declaration. We are conscious of this fact that a dying declaration recorded by a police officer can be looked into by the Court and it is not a mandate of law that the police officer would not record a dying declaration, but at the same time keeping in view the facts and circumstances of this case, when sufficient time was available for the statement to be recorded by a Magistrate, then recording of the statement by a police officer certainly creats a ring of doubt around the prosecution version. The absence of a Magistrate or a doctor is required to be explained if the prosecution wants the Court to place

reliance on the dying declaration recorded by the police officer. In the instant case, what to talk of explanation, even no effort was made by the Investigating Officer to get the statement of Harpreet Kaur recorded by any Magistrate.

It is well settled that a dying declaration can form sole basis of conviction if it is free from any kind of doubt and recorded in accordance with law. Generally, a dying declaration ought to be recorded by an Executive Magistrate with certificate from doctor about mental fitness. A reference may be made to the law laid down by the Hon"ble Supreme Court.

It is well settled that a dying declaration can form sole basis of conviction if it is free from any kind of doubt and recorded in accordance with law. Generally, a dying declaration ought to be recorded by an Executive Magistrate with certificate from doctor about mental fitness. A reference may be made to the law laid down by the Hon'ble Supreme Court.

In ***Tapinder Singh*** ***v.*** ***State of Punjab*** AIR 1970 SC 1566, it was observed:-

> *"*5. The dying declaration is a statement by a person as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death and it becomes relevant under Section 32(1) of the Indian Evidence Act in a case in which the cause of that persons death comes into question. It is true that a dying declaration is not a deposition in court and it is neither made on oath nor in the presence of the accused. It is, therefore, not tested by cross-examination on behalf of the accused. But a dying declaration is admitted in evidence by way of an exception to the general rule against the admissibility of hearsay evidence, on the principle of necessity. The weak points of a dying declaration just mentioned merely serve to put the court on its guard while testing its reliability, by imposing on it an obligation to closely scrutinise all the relevant attendant circumstances."

In ***Paparambaka Rosamma*** ***v.*** ***State of A.P.,*** AIR 1999 SC 3455, it was observed:-

9. ……. It was, therefore, necessary for the prosecution to prove the dying declaration as being genuine, true and free from all doubts and it was recorded when the injured was in a fit state of mind. In our opinion, the certificate appended to the dying declaration at the end by Dr Smt K. Vishnupriya Devi (PW 10) did not comply with the requirement inasmuch as she has failed to certify that the injured was in a fit state of mind at the time of recording the dying declaration. The certificate of the said expert at the end only says that patient is conscious while recording the statement. In view of these material omissions, it would not be safe to accept the dying declaration (Ex. P-14) as true and genuine and as made when the injured was in a fit state of mind. From the judgments of the courts below, it appears that this aspect was not kept in mind and resultantly they erred in accepting the said dying declaration (Ex. P-14) as true, genuine and as made when the injured was in a fit state of mind. In medical science two stages namely conscious and a fit state of mind are distinct and are not synonymous. One may be conscious but not necessarily in a fit state of mind. This distinction was overlooked by the courts below."

In ***Dandu Lakshmi Reddy v. State of A.P.,*** **AIR 1999 SC 3255**, it was observed:-

"**1.** On the fact situation of a case such as this, a judicial mind would tend to wobble between two equally plausible hypotheses was it suicide, or was it homicide? If the dying declaration projected by the prosecution gets credence the alternative hypothesis of suicide can be eliminated justifiably. For that purpose a scrutiny of the dying declaration with meticulous circumspection is called for. It must be sieved through the judicial cullendar and if it passes through the gauzes it can be made the basis of a conviction, otherwise not.

2. The traditional assumption that a dying person would not stoop to speak falsehood is now sought to be played down by the counsel for the appellant on the premise that it is a pedantic notion as the said assumption is fraught with the danger of insulating even a vengeful statement made by a dying person. Learned counsel submitted that at any rate the dying declaration projected by the prosecution in this case would not stand the test of credibility.

3. There can be a presumption that the testimony of a competent witness given on oath is true, as the opposite party can use the weapon of cross-examination, inter alia, for rebutting the presumption. But a dying declaration is not a deposition in court. It is neither made on oath nor in the presence of an accused. Its credence cannot be tested by cross-examination. Those inherent weaknesses attached to a dying declaration would not justify any initial presumption to be drawn that the dying declaration contains only the truth.

In ***Laxmi v. Om Prakash*** AIR 2001 SC 2383, it was observed:-

"1. …….The law is well settled: dying declaration is admissible in evidence. The admissibility is founded on the principle of necessity. A dying declaration, if found reliable, can form the basis of conviction. A court of facts is not excluded from acting upon an uncorroborated dying declaration for finding conviction. A dying declaration, as a piece of evidence, stands on the same footing as any other piece of evidence. It has to be judged and appreciated in the light of the surrounding circumstances and its weight determined by reference to the principles governing the weighing of evidence. It is as if the maker of the dying declaration was present in the court, making a statement, stating the facts contained in the declaration, with the difference that the declaration is not a statement on oath and the maker thereof cannot be subjected to cross-examination. If in a given case a particular dying declaration suffers from any infirmities, either of its own or as disclosed by other evidence adduced in the case or circumstances coming to its notice, the court may as a rule of prudence look for corroboration and if the infirmities be such as render the dying declaration so infirm as to prick the conscience of the court, the same may be refused to be accepted as forming a safe basis for conviction. In the case at hand, the dying declarations are five. However, it is not the number of dying declarations which will weigh with the court. A singular dying declaration not suffering from any infirmity and found worthy of being relied on may form the basis of conviction. On the other hand, if every individual dying declaration consisting in a plurality is found to be infirm, the court would not be persuaded to act thereon merely

because the dying declarations are more than one and apparently consistent."

In ***Arvind Singh v. State of Bihar*** AIR 2001 SC 2124, it was observed:-

15. Though the earlier view of this Court in Ram Nath's case (Ram Nath Madhoprasad v. State of Madhya Pradesh, AIR 1953 SC 420: (1953 Cri LJ 1772) stands overruled by a five-Judge judgment in the case of Tarachand Damu Sutar v. State of Maharashtra, AIR 1962 SC 130: (1962 (1) Cri LJ 196) but there is no denial of the fact that a dying declaration ought to be treated with care and caution since the maker of the statement cannot be subjected to any cross-examination. The same is the view taken in the case of Munnu Raja v. State of Madhya Pradesh) wherein this Court stated:

"It is well settled that though a dying declaration must be approached with caution for the reason that the maker of the statement cannot be subjected to cross-examination, there is neither a rule of law nor a rule of prudence which has hardened into a rule of law that a dying declaration cannot be acted upon unless it is corroborated. Thus court must not look out for corroboration unless it comes to the conclusion that the dying declaration suffered from any infirmity by reason of which it was necessary to look out for corroboration.

16. In the same year this Court in the case of K. Ramachandra Reddy v. Public Prosecutor AIR 1976 SC 1994: (1976 Cri LJ 1548) observed:

"The dying declaration is undoubtedly admissible under Section 32 and not being a statement on oath so that its truth could be tested by cross-examination, the courts have to apply the strictest scrutiny and the closest circumspection to the statement before acting upon it. While great solemnity and sanctity is attached to the words of a dying man because a person on the verge of death is not likely to tell lies or to concoct a case so as to implicate an innocent person, yet the court has to be on guard against the statement of the deceased being a result of either tutoring, prompting or a product of

his imagination. The court must be satisfied that the deceased was in a fit state of mind to make the statement after the deceased had a clear opportunity to observe and identify his assailants and that he was making the statement without any influence or rancour. Once the court is satisfied that the dying declaration is true and voluntary it can be sufficient to found the conviction even without any further corroboration.

A dying declaration which has been recorded by a competent Magistrate in the proper manner, that is to say, in the form of questions and answers, and, as far as practicable, in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and human character. In order to test the reliability of a dying declaration, the court has to keep in view the circumstances like the opportunity of the dying man for observation, for example, whether there was sufficient light if the crime was committed at night; whether the capacity of the man to remember the facts stated had not been impaired at the time he was making the statement, by circumstances beyond his control; the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it; and the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties AIR 1`958 SC 22: (1958 Cri LJ 106) Rel on."

In ***Ramilaben Hasmukhbhai Khristi*** *v.* ***State of Gujarat*** AIR 2002 SC 2996, it was observed:-

"28. Under the law, dying declaration can form the sole basis of conviction, if it is free from any kind of doubt and it has been recorded in the manner as provided under the law. It may not be necessary to look for corroboration of the dying declaration. As envisaged, a dying declaration is generally to be recorded by an Executive Magistrate with the certificate of a medical doctor about the mental fitness of the declarant to make the statement. It may be in the form of question and answer and the answers be written in the words of the person making the declaration. But the court cannot be too technical and in substance if it feels convinced about the

trustworthiness of the statement which may inspire confidence such a dying declaration can be acted upon without any corroboration."

"32. The four dying declarations recorded by the doctor, the Police Inspector and the two Magistrates have been discussed in some detail above. None of these dying declarations contains any certificate by the doctor about the mental fitness of Pragnesh Kumar to make a statement although the doctor was always available. In two dying declarations it is only indicated that he was conscious. No amount of subsequent statement of the doctor can supplement the endorsement of certificate while recording the dying declaration. The first two statements have been recorded in quick succession without waiting for the Magistrate to arrive even though steps had been taken for recording of the dying declaration by the Magistrate who actually got the message at about 10.30 a.m. and had contacted the doctor at the hospital at 11.05 a.m. There are deviations from statement to statement, consistency is conspicuously missing. The first dying declaration recorded by Dr Kolte does not say about Pushpaben sprinkling the kerosene oil. Eight or nine persons living in the lane are said to have surrounded him but who sprinkled oil and who lighted the matchstick is not stated. In view of the decisions of this Court referred to above, it may not be possible to base the conviction on the sole basis of the dying declarations. There is no eyewitness to the incident. In two dying declarations he had stated about being beaten by the accused persons but no such injuries are found in any report."

In the present case, only certificate given by the doctor is that "Patient Harpreet Kaur fit to give statement". In his deposition, Dr. K.D. Singh has stated that the patient remained fit/conscious when her statement was being recorded. Beyond stating that the deceased was in a position to make a statement, nothing was mentioned about the mental fitness of the deceased. No reason was given why no Magistrate was called to record a statement.

Apart from this aspect of the matter, the entire case of the prosecution has been built up on a sandy foundation, which was bound to collapse, particularly when the father and mother of the deceased have not

supported the prosecution version in any manner and then again admission on the part of Kangan Khan, the father of the deceased, (PW-2) that his daughter remained unconscious throughout till her death, added another nail to the coffin of the prosecution case, inasmuch as, if she remained unconscious throughout, then the question of suffering a dying declaration does not arise.

In such like circumstances, the dying declaration does not inspire full confidence of the Court.

It is well settled that burden of proving the charge is on the prosecution and if there is no evidence, an accused cannot be convicted, even if there is a strong suspicion about commission of offence.

The Hon'ble Supreme Court in ***Narendra Singh and another v. State of M.P.,*** AIR 2004 SC 3249, while dealing with a matter of death of wife who died due to burn injuries, in absence of adequate evidence, held that acquittal by the trial Court was justified and setting aside there of was not called for. Some of the relevant observations are:-

> "30. It is now well settled that benefit of doubt belonged to the accused. It is further trite that suspicion, however grave may be, cannot take place of a proof. It is equally well settled that there is a long distance between may be and must be.
>
> 31. It is also well known that even in a case where a plea of alibi is raised, the burden of proof remains on the prosecution. Presumption of innocence is a human right. Such presumption gets stronger when a judgment of acquittal is passed. This Court in a number of decisions has set out the legal principle for reversing the judgment of acquittal by a higher court (see Dhanna v. State of M.P., (1996) 10 SCC 79; Mahabir Singh v. State of Haryana (2001) 7 SCC 148 and Shailendra Pratap & Anr. V. State of U.P., (2003 1 SCC 761, which had not been adhered to by the High Court.
>
> 32. The entire case is based on circumstantial evidence. Pieces of circumstances, however strong may be, it is well known that all links in the chain must be proved. In this case a vital link in the chain viz. possibility of Appellant 1 committing the offence, closing the door

and then sneaking out of the room from one of the two places had not been proved by the prosecution."

In view of above, in absence of clear evidence, we are unable to hold that prosecution proved its case beyond reasonable doubt. The accused are, thus, entitled to the benefit of doubt.

Accordingly, this appeal is allowed and conviction of the appellants is set-aside and they are acquitted. It has been stated that the appellant Nos.2 and 3 are on bail. Their bail bonds are discharged and the appellant No.1 who is in custody, is directed to be released forthwith, if not required in any other case.

The appeal is disposed of accordingly.

(ADARSH KUMAR GOEL)
JUDGE

January 16, 2007
Ashwani/VK

(H.S. BHALLA)
JUDGE